

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: W.R. GRACE & CO., <i>et al.</i>, Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING
QUARTERLY INTERIM FEE APPLICATION OF ORRICK, HERRINGTON &
SUTCLIFFE LLP FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR THE PERIOD OF JULY 1, 2009 THROUGH SEPTEMBER 30, 2009**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Quarterly Interim Fee Application of Orrick, Herrington & Sutcliffe LLP for Compensation and Reimbursment of Expenses for the Period of July 1, 2009 through September 30, 2009 (the "Application").

BACKGROUND

1. Orrick, Herrington & Sutcliffe LLP ("Orrick") was retained as bankruptcy counsel to David T. Austern, future claimants' representative. In the Application, Orrick seeks approval of fees totaling \$1,674,330.00 and expenses totaling \$57,526.76 for its services from July 1, 2009 through September 30, 2009 (the "Thirty-Fourth Interim Period" or "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2009, and the United States Trustee Guidelines for

Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served on Orrick an initial report based on our review, and we received a response from Orrick, portions of which response are quoted herein.

DISCUSSION

2. In our initial report, we noted certain meal charges for which more information was needed. These charges are listed on Exhibit "1." In response to our inquiry, Orrick provided the following information:

Attached hereto as (Response) Exhibit A is a chart reflecting the requested additional detail on those certain meal expenses identified in the Fee Auditor's initial report, including the number of people dining, the location of the meal, and the type of meal. Please note that all appropriate reductions were previously taken in the corresponding monthly fee applications.

We have attached Response Exhibit "A" to this report, and we concur that Orrick's Application already reflects all required reductions for the meal charges listed.¹ Thus, we have no objection to these expenses.

3. We noted the following hotel expenses for which more information was needed:

6/26/2009 Wyron, Richard HOTEL \$3,805.00 VENDOR: Omni William Penn Hotel; INVOICE#: 17000799615; DATE: 6/26/2009 - DC-DC\id#101609\mkm-payment to hotel for dates of 6/21-26/09 Roger Frankel, Jonathan Guy, Richard Wyron, banquet-send to DC Office, call Deby Spicuzza x8588

¹Orrick's reductions are based on our recommended guidelines, then in effect, of \$35 for breakfast, \$45 for lunch, and \$65 for dinner in New York City, and \$25 for breakfast, \$35 for lunch, and \$55 for dinner in all other locales.

9/16/2009 Wyron, Richard HOTEL \$6,529.92 VENDOR: Omni William Penn Hotel; INVOICE#: 17000011775; DATE: 9/16/2009 - DC-DC\id#105499\mkm-acct. 17000402246-send to DC Office, call D. Spicuzza x8588

In response to our request, Orrick provided us with a copy of the itemized invoices for these expenses and, in addition, responded as follows:

Attached hereto are copies of invoices from the Omni William Penn Hotel in the amount of \$3,805.00 and \$7,052.87. Please note that the amount of \$6,529.92 as noted in your report represents the total invoice amount of \$7,052.87 less \$522.95 (\$482.12 for meal charges and \$40.83 for shipping charges). These invoices represent the block of rooms reserved for several attorneys, a war room, and other related charges with regard to our work for the PI FCR at the confirmation hearings on June 21-23, 2009 and September 8-11, 2009. In addition, in (Response) Exhibit B, we itemize the meal charges contained in these invoices, and take reductions consistent with your Guidelines where appropriate. These reductions total \$41.84.

We have reviewed the invoices and note that, although the Omni William Penn Hotel is classified as a “luxury” hotel,² the room rates charged to Orrick for these particular stays ranged from \$179 to \$259 per night, well under the guideline of \$300 per night (plus taxes) which we utilize for Pittsburgh. Thus, we have no objection to the room charges on these invoices. With respect to the meal charges included in these invoices (see Response Exhibit “B”), we appreciate and concur with Orrick’s voluntary reduction of \$41.84. Thus, we recommend a reduction of \$41.84 in expenses.

4. We noted several travel expenses for which more information was needed. See Exhibit “2.” In response to our inquiry, Orrick provided additional information concerning these charges (see Response Exhibit “C”). We accept Orrick’s response with respect to each of these expenses, with the exception of the hotel charges of \$349 and \$329 per night (excluding taxes) for four-night stays at the Omni William Penn Hotel in Pittsburgh by attorneys Frankel and Wyron. As

²The Omni William Penn Hotel is rated four and one-half stars on the Expedia travel website.

stated in the preceding paragraph, the Omni in Pittsburgh is classified as a luxury hotel,³ and, therefore, we apply a guideline of \$300 per night, excluding taxes, to measure the reasonableness of the charges. Orrick provided the following additional information concerning these charges:

By way of further explanation, we had reserved a block of rooms at the Omni for the first week in September, which the Court had scheduled for confirmation hearings. The Court then added the second week in September to the schedule, but the Omni was virtually booked solid that second week (because of an AFL-CIO convention in Pittsburgh) and would not let us extend the block reservation to the second week.

As a result, Roger Frankel and I managed to get individual rooms at the Omni that week, but Peri Mahaley could not, and she stayed at a nearby Marriott.

We appreciate Orrick's response, but note that there were other hotels besides the Omni at which the professionals could have stayed. Thus, although convenient to the professionals, it was not necessary that they stay at the Omni, and that it was, after all, Orrick's choice to utilize the Omni in the first place. We therefore recommend that reimbursement for these charges be reduced to \$300.00 per night for each of the eight nights in question, for a reduction of \$312.00⁴ in expenses.

CONCLUSION


5. Thus, we recommend approval of \$1,674,330.00 in fees and \$57,172.92 in expenses (\$57,526.76 minus \$353.84) for Orrick's services for the Thirty-Fourth Interim Period.

³See Footnote 2, *supra*.

⁴For the four nights at \$349.00 per night, we recommend a reduction of \$196.00 (or $4 \times \$49$); and for the four nights at \$329 per night, we recommend a reduction of \$116.00 (or $4 \times \$29$), for a total reduction of \$312.00.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.


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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 3rd day of March, 2010.


Warren H. Smith

SERVICE LIST

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